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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,431	08/10/2001	Alberto Gonzalo Perez Roldan	P56378	4119
7590	08/06/2003			12
Robert E. Bushnell Suite 300 1522 K Street, N.W. Washington, DC 20005-1202			EXAMINER	
			MEDLEY, MARGARET B	
ART UNIT		PAPER NUMBER		
1714				

DATE MAILED: 08/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/925,431	PEREZ ROLDAN, ALBERTO GONZALO
	<b>Examiner</b> Margaret B. Medley	<b>Art Unit</b> 1714

-- The MAILING DATE of this communication appears in the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 April 2003 and 09 July 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9, 15, 16, 21-39 and 41-51 is/are pending in the application.
- 4a) Of the above claim(s) 41-49 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3, 5-8, 15, 16, 21-39, 50 and 51 is/are rejected.
- 7) Claim(s) 4 and 9 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) Paper No(s). <u>10</u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)               |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

This office action is in response to Paper No. 9 dated April 25, 2003 and Paper No. 11 dated July 9, 2003.

The amendments to claims 1-9, 15-16, 21, 24, 31, 33 and 34; the cancellation of claims 10-14, 17-20 and 40; and the addition of claims 41-51 have been entered of record.

The pending claims of record are claims 1-9, 15-16, 21-39 and 41-51.

Newly submitted claims 41-49 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The composition of claims 1-9, 15-16, 21-39 and 50-51 can be made by a process other than by the process of claims 41-49.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 41-49 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-8, 15-16, 21-39 and 50-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morrison et al (Morrison) 5,879,649 and 6,066,329 as applied to claims 5, 16, 22, 25-30, 32, 34-39 in Paper No. 7 dated April 2, 2003, and further in view of Camp et al (Camp 5,964,905).

Applicant claims hydrocarbon oil having a flash point greater 220<sup>0</sup>C and a viscosity greater than 32 cSt at 40<sup>0</sup>C wherein the references of Morrison are silent to said teachings.

Camp provides teaching to candle composition comprising about 5 to 10% by weight block polymers and 80-98% by weight hydrocarbon oil having a flash point at least 440<sup>0</sup>F (greater than 220<sup>0</sup>C) column 3, lines 6-18 and Examples 2, 3 and 4.

It would have been obvious to the artisan in the art with the teachings of Camp to add and use the high flash point hydrocarbon oil of Camp in the candle composition of Morrison providing a candle composition having a high flash point. Camp further supports the teachings of Morrison that the gel consistency can be control by varying the ratio and type of tri-block copolymers. Patentee clearly teaches that the higher the amount of copolymer, the stiffer the gel, column 3, lines 19-21. The compositions of the prior art of the patentees of Morrison have the same or overlapping ratio of hydrocarbon oil and block polymers therefore inherently having the same properties rendering the instant claims obvious.

Claim 2 is objected to because of the following informalities: In line 3 the 67.8 cSt at - 40<sup>0</sup>C should be corrected to reflect 32 cSt at 40<sup>0</sup>C as set forth on page 12 in Table 1 of claim 1. Appropriate correction is required.

Claims 2 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The corrections required in claims 2 and 7 do not appear to not provide a further limitation of claims 1 and 16 and the claims 2 and 7 should be canceled.

Claims 4 and 9 are objected to as being dependent upon claims that are not allowable.

Applicant's arguments filed April 25, 2003 and July 9, 2003 have been fully considered but they are not persuasive.

The objection to claim 33 and the rejection of other claims under 35 U.S.C. 112 second 102 and 103 paragraphs are withdrawn in view of applicants' amendments, cancellation of other claims and arguments presented of record in Paper No. 8 dated April 25, 2003.

Applicant's arguments with respect to claims 1-3, 5-8, 15-16, 21-39 and 41-51 have been considered but are moot in view of the new ground(s) of rejection.

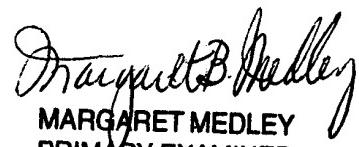
The prior art made of record and not relied upon further teaches candles and candle compositions comprising additives of the same nature as claimed by the instant claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret B. Medley whose telephone number is 703-308-2518. The examiner can normally be reached on Monday-Friday from 7:30 am to 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 703-306-2777. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

M. B. Medley/mn  
August 5, 2003

  
MARGARET B. MEDLEY  
PRIMARY EXAMINER